

Application No.: 10/823,456  
Office Action dated June 15, 2007  
Amendment and Response dated September 17, 2007  
Docket No.: 760-182  
Page 15

**Remarks/Arguments:**

**Introduction**

Claims 1-79 were pending. Claims 58 and 65-78 have been canceled. Claims 80-91 have been added. Upon entry of the added claims, claims 1-57, 59-64 and 79-91 will be pending.

Independent claims 1, 32, 49 and 79 have been amended to further describe the bulbous section or portion as being a generally spherically or oblong section or portion.. Support for these amendments may be found in the specification at paragraph [0030]. Claims 14 and 16 have been amended for proper antecedent basis. Claims 62-64 have been amended to correct a typographical error. Claims 80-91 have been added. Support for claims 80, 81, 83, 84, 86, 87, 89 and 90 may be found in the specification at paragraph [0030]. Support for claims 82, 85, 88 and 90 may be found in the specification at paragraph [0037].

**Section 112 Rejections**

Claims 14 and 16 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Applicant respectfully submits that with the amendments to claims 14 and 16 that the section 112 concerns are obviated. Reconsideration and withdrawal of the rejection of claims 12 and 14 under section 122 are respectfully requested.

**Section 102 Rejections**

Claims 1-3, 6, 7, 10-21, 24-29, 31, 32, 36, 38-41, 44-46 and 79 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,517,687 to Liebig et al. (hereinafter "Liebig"). Applicant respectfully traverses.

Liebig is directed to a woven graft. A bifurcated and crimped graft is depicted in Fig. 3 of Liebig. Liebig, however, fails to disclose, *inter alia*, a woven bulbous portion having a greater number of warp yarns as compared to a contiguous tubular woven portion as set forth in independent claims 1 and 32. Further, Liebig fails to disclose, *inter alia*, a woven bulbous portion having a greater number of warp yarns as compared to two seamlessly transitioned tubular woven portions as set forth in independent claim 79.

Thus, Liebig fails to disclose each and every limitation of independent claims 1, 32 and 79. Therefore, reconsideration and withdrawal of the rejections of claims 1-3, 6, 7, 10-21, 24-29, 31, 32, 36, 38-41, 44-46 and 79 under 35 U.S.C. §102(b) are respectfully requested.

#### **Section 103 Rejections**

Claims 4, 5, 22, 23, 33, 34, 42, 43, 47-56 and 59-64 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Liebig in view of U.S. Patent No. 5,800,514 to Nunez et al. (hereinafter "Nunez"). Applicant respectfully traverses.

Nunez fails to teach or suggest a , *inter alia*, a bulbous portion, in particular a generally spherically or oblong portion, as set forth in the independent claims. Moreover, Nunez fails to teach or suggest, *inter alia*, a bulbous portion having a greater number of warp yarns as compared to a contiguous tubular woven portion. Liebig fails to teach or suggest, *inter alia*, a woven bulbous portion having a greater number of warp yarns as compared to a contiguous tubular woven portion as set forth in independent claims 1 and 32. Assuming *arguendo* that Fig. 3 of Liebig depicts bulbous portions, such bulbous sections are achieved simply by crimping of the graft and are not made in accordance with the limitations of the independent claims of the subject application.

Further, Liebig teaches away from the woven bulbous portion(s) of the present invention having a different diameter and a different number of warp yarns than immediate

Application No.: 10/823,456  
Office Action dated June 15, 2007  
Amendment and Response dated September 17, 2007  
Docket No.: 760-182  
Page 17

contiguous woven tubular portion(s). For example, Liebig specifically teaches that its graft must be woven only in straight sections, i.e., no bulbous portions, as follows:

**[T]he fabric must be woven in tubular form, either straight, or bifurcated.** (Liebig, column 5, lines 8-9)(emphasis added)

Such a teaching in Liebig is also in direct contrast to the teachings of Nunez. In establishing a *prima facie* case of obviousness, the cited references must be considered for the entirety of their teachings. *Bausch & Lomb, Inc. v. Barnes-Hind, Inc.*, 230 U.S.P.Q. 416, 419 (Fed. Cir. 1986). It is impermissible during examination to pick and choose from a reference only so much that supports the alleged rejection. *Id.* It is only through hindsight reconstruction does the examiner attempt to reach the present invention through the combined teachings of Liebig and Nunez. It is also well established, however, that hindsight reconstruction of a reference does not present a *prima facie* case of obviousness, and any attempt at hindsight reconstruction using Applicants' disclosure is strictly prohibited. *In re Oetiker*, 24 U.S.P.Q.2d 1443, 1445-46 (Fed. Cir. 1993). As Liebig and Nunez, individually or in combination, fail to teach or suggest the recited wall bulbous portions as presently defined in the independent claims of the subject application, any attempt to modify the teachings of Liebig and/or Nunez to the same is clearly hindsight reconstruction.

Thus, claims 4, 5, 22, 23, 33, 34, 42, 43, 47-56 and 59-64 are patentably distinct over Liebig and Nunez, individually or in combination. Reconsideration and withdrawal of the rejections of claims 4, 5, 22, 23, 33, 34, 42, 43, 47-56 and 59-64 are respectfully requested.

Claims 8, 9, 30 and 37 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Liebig in view of U.S. Patent No. 6,352,554 to De Paulis (hereinafter "De Paulis"). Applicant respectfully traverses.

De Paulis is directed to graft having a tubular first portion 12 and a shaped skirt portion 14. These portions are joined by suturing them to one and the other. (De Paulis, column 6, lines

Application No.: 10/823,456  
Office Action dated June 15, 2007  
Amendment and Response dated September 17, 2007  
Docket No.: 760-182  
Page 18

5-7). Thus, assuming arguendo that the skirt portion 14 of De Paulis may be construed as a bulbous portion, De Paulis fails to teach or suggest a seamless translation with engagingly interlaced yarns between its two portions. In other words, De Paulis fails to teach or suggest a bulbous portion contiguously woven to a tubular portion as set forth in independent claims 1 and 32.

Thus, De Paulis fails to cure the deficiencies of Liebig. Therefore, reconsideration and withdrawal of the rejections of claims 8, 9, 30 and 37 under 35 U.S.C. §103(a) are respectfully requested.

Claim 57 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Liebig in view Nunez and in further view of De Paulis. Applicant respectfully traverses.

As discussed above Liebig, Nunez and De Paulis fail to teach or suggest the present invention as set forth in independent claim 49. It is therefore respectfully submitted that Liebig, Nunez and De Paulis, individually or in combination, fail to teach or suggest the present invention. Reconsideration and withdrawal of the rejection of claim 57 under 35 U.S.C. §103(a) is respectfully requested.

#### Summary


Therefore, Applicants respectfully submit that independent claims 1, 32, 49 and 79, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Application No.: 10/823,456  
Office Action dated June 15, 2007  
Amendment and Response dated September 17, 2007  
Docket No.: 760-182  
Page 19

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

  
\_\_\_\_\_  
John S. Sopko  
Registration No.: 41,321  
Attorney for Applicants

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(973) 331-1700